

April 28, 2017

Sent via email (rhaug@blainemn.gov)

Ms. Rebecca Haug
Water Resources Manager
City of Blaine
10801 Town Square Drive NE
Blaine, MN 55449

**Re: Proposal for Professional Land Surveying Services
Request for Proposal - Stormwater Pond Surveys – 5 Year Contract
City of Blaine - 5 Regions (± 54 Ponds per Region)**

Dear Ms. Haug,

Carlson McCain, Inc. (Carlson McCain) is pleased to present this proposal and cost estimate for land survey services in response to the City of Blaine's Request for Proposal (RFP) of Stormwater Pond Surveys. Upon review of the request for proposal (RFP), Carlson McCain's scope and cost estimate to conduct this work is provided in the following section.

SUMMARY OF WORK TASKS:

1. Field as-built the existing pond edge.
2. Drill approximately 30 to 60 foot grid pattern on each pond (as needed) and as-built pond depth.
3. Field as-built depth of muck (when present).
4. Search for visible storm sewer structures and as-built accessible information.
 - a. Inverts and pipe sizes.
5. Drill hole adjacent to pond inlet and as-built pond depth adjacent to inlet area.
6. Prepare and draft a pond as-built exhibit depicting above field information, together with pond surface area and date of measurement.

ASSUMPTIONS (Information to be furnished by the City of Blaine)

1. City as-builts for all storm ponds.
2. Previous survey data for each pond.

TOTAL ESTIMATE \$222,750 (\$44,550 per region)

To authorize the work, please review the attached Standard Terms and Conditions, sign in the space provided below and return via email to tballuff@carlsonmccain.com or fax to (763) 489-7959.

We appreciate the opportunity to submit this proposal and cost estimate. If you have any questions or comments, please feel free to call me at (763) 489-7916. We look forward to working with you on this project.

Sincerely,

Carlson McCain, Inc.



Thomas R. Balluff, L.S.
Professional Land Surveyor

Accepted by: City of Blaine

Clark Arneson, City Manager

Date

Accepted by: City of Blaine

Attachment

Tom Ryan, Mayor

Date

STANDARD TERMS AND CONDITIONS

- 1. STANDARD OF CARE.** Services shall be performed by Carlson McCain, Inc. (hereinafter referred to as the Company) in accordance with the standard of professional practice ordinarily exercised by the applicable profession at the time and within the locality where the Services are performed. Professional Services are not subject to, and the Company can not provide, any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code. Any such warranties or guarantees contained in any purchase orders, requisitions or notices to proceed issued by a client are specifically objected to.
- 2. CHANGE OF SCOPE.** The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, information supplied by Client. For some projects the scope may not be fully definable during the initial phases. As the Project progresses, facts discovered may indicate that scope must be redefined. The Company will promptly provide Client with an amendment to this Agreement to recognize such change, which shall be deemed approved if not objected to within 15 days of receipt by Client.
- 3. SAFETY.** The Company has established and maintains corporate programs and procedures for the safety of its employees. Unless specifically included as a service to be provided as a service under this Agreement, the Company specifically disclaims any authority or responsibility for general job site safety and safety of persons other than the Company employees.
- 4. DELAYS.** If events beyond the control of Client or the Company, including, but not limited to, fire, flood, explosion, riot, strike, war, process shutdown, acts of God or the public enemy, and act or regulation of any government agency, result in delay to any schedule established in this Agreement, such schedule shall be amended to the extent necessary to compensate for such delay. In the event such delay exceeds 90 days, the Company shall be entitled to an equitable adjustment in compensation.

In the event that the project is delayed by Client and such delay exceeds 30 days, the Company shall be entitled to an extension of time equal to the delay and an equitable adjustment in compensation.

- 5. TERMINATION / SUSPENSION.** Either party may terminate this Agreement upon 30 days written notice to the other party. Client shall pay the Company for all Services, including any expenses, incurred prior to termination.

In the event that either party defaults in its obligations under this Agreement (including Clients obligation to make the payments required hereunder), the non-defaulting party may, after 7 days written notice stating its intention to suspend performance under the Agreement if cure of such default is not commenced and diligently continued, and failure of the defaulting party to commence cure within such time limit and diligently continue, suspend performance under this Agreement.

- 6. OPINIONS OF CONSTRUCTION COST.** Any opinion of construction costs prepared by the Company is supplied for the general guidance of the Client only. Since the Company has no control over the competitive bidding or market conditions, the Company cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to client.
- 7. RELATIONSHIP WITH CONTRACTORS.** The Company shall serve as Client's professional representative for the Services, and may make recommendations to Client concerning actions relating to Client's contractors, but the Company specifically disclaims any authority to direct or supervise the means, methods, techniques, sequences, or procedures or construction selected by Client's contractors.
- 8. CONSTRUCTION/CONTRACTOR OVERSIGHT.** For projects involving construction or contractor oversight, Client acknowledges that under generally accepted professional practice, interpretations of construction documents or field plans in the field are normally required, and that performance of construction-related services by the design professional for the project permits errors or omissions to be identified and corrected at comparatively low cost. Client agrees to hold the Company harmless from any claims resulting from performance of construction-related or contractor oversight services by persons other than the Company.
- 9. INSURANCE.** The Company will maintain insurance coverage for Comprehensive General, Automobile and Worker's Compensation in amounts in accordance with legal, and the Company's business requirements. Certificates evidencing such coverage will be provided to Client upon request.
- 10. INDEMNITIES.** To the fullest extent permitted by law, the Company shall indemnify and save harmless Client from and against loss, liability, and damages sustained by Client, its agents, employees, and representatives by reason of injury or death to

persons or damage to tangible property to the extent caused directly by the willful misconduct or failure to adhere to the standard of care described in Paragraph 1 above of the Company, its agent or employees.

To the fullest extent permitted by law, Client shall defend, indemnify, and save harmless the Company, its agents, employees, and representatives from and against loss, liability, and damages (including reasonable litigation costs) arising from or relating to claims for injury or death to persons, damages to tangible property, or other losses, alleged to be caused by any of the following: (a) any substance, condition, element, or material or any combination of the foregoing (i) produced, emitted or released from Project (ii) tested by the Company under this Agreement, or (iii) used or incorporated by the Company in the Services; or (b) operation or management of the Project. Client also agrees to require its construction contractor, if any, to include the Company as an indemnitee under indemnification obligation to Client.

11. LIMITATIONS OF LIABILITY. No employee or agent of the Company shall have individual liability to Client. Client agrees that, to the fullest extent permitted by law, the Company's liability to Client for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any causes including, but not limited to, the Company's negligence, errors, omissions, strict liability, or breach of contract shall not exceed the total compensation received by the Company under this Agreement. If Client desires a limit of liability greater than that provided above, Client and the Company shall include in Part III of this Agreement the amount of such limit and the additional compensation to be paid to the Company for assumption of such additional risk.

IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL THE COMPANY BE LIABLE TO CLIENT FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES.

12. ACCESS. Client shall provide the Company safe access to any premises necessary for the Company to provide services.

13. REUSE OF PROJECT DELIVERABLES. Reuse of any documents or other deliverables, including electronic media, pertaining to the Project by Client for any purpose other than that for which such documents or deliverables were originally prepared, or alteration of such documents or deliverables without written verification or adaptation by the Company for the specific purpose intended, shall be at the Client's risk. Client agrees to defend, indemnify, and hold harmless the Company from all claims, damages, and expenses (including reasonable litigation costs), arising out of such reuse or alteration by Client or others acting through Client.

14. AMENDMENT. This Agreement, upon execution by both parties hereto, can be amended only by a written instrument signed by both parties.

15. ASSIGNMENT. Except for assignments (a) to entities which control, or are controlled by, the parties hereto or (b) resulting from operation of law, the rights and obligations of this Agreement cannot be assigned by either party without written permission of the other party. This Agreement shall be binding upon and inure to the benefit of any permitted assigns.

16. STATUTES OF LIMITATION. To the fullest extent permitted by law, parties agree that, except for indemnification, the time period for bringing claims under this Agreement shall expire one year after Project completion.

17. PREVAILING PARTY LITIGATION COSTS. In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs from the other party.

18. NO WAIVER. No waiver by either party of any default by the other party in the performance of any particular section of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character.

19. NO THIRD-PARTY BENEFICIARY. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including Client's contractors, if any.

20. SEVERABILITY. The various terms, provisions and covenants herein contained shall be deemed to be separate and severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

21. AUTHORITY. The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

22. LIEN RIGHTS. The Company hereby gives notice that, pursuant to Minnesota Statute Chapter 514, and as stated in the contract, it retains the right to file a lien against real property in the event of non-payment of invoices for engineering, landscape architecture, surveying, planning or environmental services performed with respect to the subject property. The lien will be prepared and filed in accordance with pertinent laws of the State of Minnesota.

23. CONSEQUENTIAL DAMAGES. Neither the Company nor the Client will be liable for any indirect, incidental, special or consequential damages (including loss of anticipated profits, business interruption or good will of other economic or commercial loss) relating to the services rendered.

24. RELATIONSHIP OF PARTIES. The Company will act solely as an independent contractor of the Client and not as the Client agent for any purpose. Neither the Company nor the Client may enter into any agreement or assume any obligation for the other, and nothing herein may be construed to establish any partnership, joint venture or principal-agent relationship between the Company and the Client.

25. SUCCESSORS AND ASSIGNS. The Client and the Company each binds itself, its successors, assigns and legal representatives to the other party with respect to all provisions of the contract/agreement. Neither the Client nor the Company shall assign, set over or transfer his interest in the contract/agreement, in whole or in part, without the prior written consent of the other, and any act in derogation hereof, shall, at the option of the non-assigning party, render the written contract/agreement terminated.

26. ARBITRATION. All claims, disputes and other matters in question arising out of, or relating to, the contract/agreement or the breach thereof shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, unless the parties mutually agree otherwise in writing. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law in the State of Minnesota. Notice of the demand for arbitration shall be filed in writing with the other party to the contract/agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event, shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitation. Arbitration will not limit the Company's mechanic's lien rights. All arbitrations will be conducted in Hennepin County, Minnesota.

The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Arbitration of claims arising from the contract/agreement shall not be consolidated with any other arbitration proceedings except by written consent of the parties.

27. ENTIRE AGREEMENT. The Client's engagement of the Company to perform work represents the Client's acceptance of the terms and conditions contained herein, which constitute the entire understanding between the Company and the Client and supersede any previous communication, representations or agreements by either party, whether oral or written. The terms and conditions contained herein take precedence over the Client's additional or different terms and conditions that may be contained in any purchase order, work order, invoice, gate pass, acknowledgment form, manifest or other document forwarded by the Client to the Company to which notice of objection is hereby given. Unless otherwise agreed to in writing by an officer of the Company, the Client's engagement of the Company is limited to these terms and conditions. The Company's commencement of performance will not be deemed or construed as acceptance of the Client's additional or different terms and conditions.

No change of any of the terms or conditions herein will be valid or binding on either party unless in writing and signed by an owner or an officer of the Client and by an officer of the Company. If any of the provisions hereof are invalid under any applicable statute or rule or law or law, such provisions are, to that extent, deemed omitted, but the remaining terms and conditions of the contract/agreement will remain otherwise in effect. There are no understandings, agreements representations or warranties, express or implied, that are not specified herein respecting the subject hereof.

28. APPLICABLE LAW. The contract/agreement shall be governed by the laws of the State of Minnesota.

29. EEO/AA. The Company is an Equal Employment Opportunity/Affirmative Action Employer.